

Developing K-12 Curriculum from the Bottom-Up: Using ADR Techniques to Meet the Needs of Students

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*"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be." --
Thomas Jefferson to C. Yancey, 1816.*

I. INTRODUCTION

Approximately 55.6 million K-12 students attended public and private schools in the United States in the 2015-2016 school year.¹ That year, the federal, state, and local governments were projected to spend \$584.4 billion on ninety percent of these students in the form of public elementary and secondary education.² Yet, the U.S. public education system is plagued in its mission to generate a more educated populace due, in part, to excessive federal involvement and cryptic and onerous procedural Supreme Court decisions. The federal government's engrossment into public education spawned out of concerns that the U.S. was losing its international competitive edge in educational achievement,³ and out of a need to counter the perpetuation of racial inequalities in public schools.⁴ While based on sound objectives, these justifications for federal involvement ended up being the tiny string pulled that revealed an endlessly long thread of entanglement. The federal oversight of public education—via congressional legislation and agency regulation—combined with judicial decisions, have become so overbearing that developing and implementing school curriculum, perhaps the most fundamental aspect of

¹ William J. Hussar & Tabitha M. Bailey, *Projections of Education Statistics to 2022*, U.S. Department of Education National Center for Education Statistics, 5 (2014), <https://nces.ed.gov/pubs2014/2014051.pdf>.

² William J. Hussar & Tabitha M. Bailey, *Projections of Education Statistics to 2024*, U.S. Department of Education National Center for Education Statistics, 20 (2016), <https://nces.ed.gov/pubs2016/2016013.pdf>. The average projected expenditure per pupil this school year is \$11,600. *Id.* at 21. This projection does not consider the ever increasing philanthropic and special interest spending on new approaches to improving K-12 education. See Luisa Kroll, *Six of America's Top Education Philanthropists And Their Formulas for Success*, FORBES, (Dec 2, 2014, 11:15AM), <https://www.forbes.com/sites/luisakroll/2014/12/02/six-of-americas-top-education-philanthropists-and-their-formulas-for-success/#258203145fc1>; Lisa Miller, *Laurene Powell Jobs's \$100 Million Mission to Disrupt American High School*, NEW YORK MAGAZINE (October 18, 2016, 8:00 a.m.), <http://nymag.com/daily/intelligencer/2016/10/laurene-powell-jobss-mission-to-disrupt-high-school.html>.

³ NATIONAL COMMISSION ON EXCELLENCE IN EDUCATION, A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM, (1983).

⁴ Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965).

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education, has become increasingly burdensome and complicated for teachers.⁵

To the detriment of public education, teachers and school boards have been left to interpret legislative intent, judicial decisions, and agency regulations⁶ and mandated to act within these federal confines in combination with state policies. Further, teachers and school boards must navigate the various levels of government complexities in a way that makes sense for each classroom to, in turn, serve the local community more broadly. The medley of curriculum development policies and regulations derived from all levels and branches of government has failed to yield critical educational attainment results and must be replaced with a “bottom-up” approach. More specifically, the flexible process practiced in alternative dispute resolution (ADR) techniques, like mediation and negotiation, should be utilized to involve and empower all stakeholders at the local levels to develop a more robust and impactful K-12 curriculum, tailored to the distinct needs of the students⁷ and communities a school district serves.

Section II shares introductory materials and presents the contemporary climate of education policy and current methods of developing public school curriculum. Section III analyzes how ADR techniques can replace modern methodology of curriculum development and implementation in public schools. Section IV discusses how ADR can offer possible solutions to existing plagues on public school curriculum and suggests possible inquiries moving forward. Section V concludes this article.

II. THE CONTEMPORARY STATE OF AMERICAN EDUCATION AND HOW WE GOT HERE

This section provides critical background information about the modern state of public schools and how public education became an indispensable part of American society. This section then details the legal and regulatory framework teachers and schools must navigate when educating

⁵ See generally *Effects of the Federal Role and Intervention in Education: Hearing before the H. Education S. Comm. on Early Childhood, Elementary and Secondary Education* (2011) (statement of Jennifer Marshall, Vice President, Institute for Family, Community, and Opportunity, discussing the proliferation of federal programs which has led to increased federal reform leverage while creating a confusing policy maze).

⁶ See generally *Teacher Preparation Issues*, 81 Fed. Reg. 210, 75494 (Oct. 31, 2016) (showing how federal regulations influence states’ teacher training, which ultimately creates different levels of interpretation); FISCHER ET AL., *TEACHERS AND THE LAW* (Longman Inc. ed. 1981).

⁷ Throughout this paper, “students,” “children,” and “youth” are used interchangeably.

students. Lastly, this section presents the current practices of curriculum development.

A. CURRENT LANDSCAPE OF SCHOOLS

Compulsory education laws are indicative of the vitality of education to our democracy. Knowledge engenders opportunities and advancement, and develops informed citizens.⁸ While our democracy survives on the will and the minds of informed citizens, uniform expectations and standards implemented from afar do little to help each unique child grow and develop within a multifaceted and diverse community.⁹ Moreover, the amount of time and money expended by government to improve the public school system through elaborate legal principles, agency regulations, and standardized curriculum misses this point.

The importance of a national public education system is a long-held fundamental belief, tracing back to the country's founders.¹⁰ Although a few cities and colonies throughout the Colonial Period created partially funded public schools,¹¹ the idea of a public school system was not actualized until around the middle of the 19th century.¹² Like other early public institutions in the US—created in response to heightened social pressures during the turn

⁸ Michael Greenstone & Adam Looney, *The Importance of Education: An Economics View*, EDUCATION WEEK, (Nov. 5, 2012), https://www.edweek.org/ew/articles/2012/11/07/11greenstone_ep.h32.html; and see Ute Schaeffer, *Knowledge Is Power: Why Education Matters*, DW, (last visited Sep. 3, 2017), <http://www.dw.com/en/knowledge-is-power-why-education-matters/a-15880356>.

⁹ Lindsey M. Burke & Jennifer A. Marshall, *Why National Standards Won't Fix American Education: Misalignment of Power and Incentives*, The Heritage Foundation, (May 21, 2010), <http://www.heritage.org/education/report/why-national-standards-wont-fix-american-education-misalignment-power-and>.

¹⁰ Speaking on his support of a public education law: "The tax which will be paid for [the] purpose [of education] is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance." Letter from Thomas Jefferson to George Wythe (August 13, 1786) (on file with Ashland University).

¹¹ JOHN L. RURY, EDUCATION AND SOCIAL CHANGE 43-45 (Routledge ed., 5th ed. 2015).

¹² *Id.* at 49-80; see generally *American Public Education: An Origin Story*, EDUCATION NEWS, April 16, 2013 (discussing Horace Mann's innovative standardized curricula for public schools and Congress's use of "land grant colleges" as progressive points in developing a public education system).

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of the 20th century¹³—the public education system derived from the need for an educated labor force during the age of industrialization and the rise of capitalism.¹⁴ The need for an educated workforce to sustain our capitalist democracy was corroborated by all fifty states through compulsory education laws.¹⁵ Unfortunately, this system has failed to act in accordance with evolving labor-market expectations and changing demographic and socioeconomic statuses of students. Much of this failure can be traced to the endurance of arcane laws and regulations, and to the inability of policymakers to move past traditional methods of schooling.

In their current state, public schools face major challenges addressing the socioeconomic disparities preserved through education opportunities,¹⁶ while working within the cyclical relationship that perpetuates socioeconomic inequalities between housing and schooling.¹⁷ Students are compelled to learn in deteriorating buildings, sometimes without air-conditioning or heating systems.¹⁸ And the nation's public school system is more segregated than just after the landmark Supreme Court decision to desegregate schools in *Brown v. Board of Education*.¹⁹

Additionally, our public school system suffers an identity crisis. What should students be learning? How should student success be defined? How should student progress be measured? Lately, the government's

¹³ See generally Rury, *supra* note 11, at 50-60 (reviewing the large migration from rural areas to developing urban centers that combined with an influx of immigrants coming to the U.S. and residing in urban cities).

¹⁴ Michael B. Katz, *The Origins of Public Education: A Reassessment*, 16 HISTORY OF EDUCATION QUARTERLY 381, 390-392 (1976); See also Rury, *supra* note 11, at 57 & 58 (discussing the need to do something with the influx of children and the increase in poverty and crime in big cities).

¹⁵ National Center for Education Statistics, *Compulsory school attendance laws, minimum and maximum age limits for required free education, by state: 2015*, (Jan. 25, 2017), https://nces.ed.gov/programs/statereform/tab5_1.asp.

¹⁶ Adam Gamoran, *American Schooling and Educational Inequality: A Forecast for the 21st Century*, 74 SOC. OF EDUC. 135, 135-136 (2001).

¹⁷ Office of Policy Development and Research U.S. Department of Housing and Urban Development, "How Housing Mobility Affects Education Outcomes for Low-Income Children," EVIDENCE MATTERS, (Fall 2014), <https://www.huduser.gov/portal/periodicals/em/fall14/highlight2.html>.

¹⁸ Rita Jean Wagar, *Highland Officials Respond to Concerns about Heat*, THE POST (Sep 10, 2016) http://www.thepostnewspapers.com/eastern_medina/local_news/highland-officials-respond-to-concerns-about-heat/article_20d66b34-e6ef-553a-968c-852d6d9f75c7.html.

¹⁹ Greg Toppo, *GAO study: Segregation Worsening in U.S. Schools*, USA TODAY (May 17, 2016) <https://www.usatoday.com/story/news/2016/05/17/gao-study-segregation-worsening-us-schools/84508438/>.

disparate approaches to fundamental aspects of education—i.e., curriculum development, teacher evaluations, and student achievement—have left students, teachers, and school boards hampered with high dropout rates,²⁰ low retention rates,²¹ and the infamous “achievement gap.”²² These approaches have also weakened the economy by graduating students ill-equipped and unqualified to work in the competitive, technologically-advanced labor force.

B. TEACHERS WITHIN THE CURRENT LANDSCAPE

In addition to being subject experts for their students, teachers must be cognizant of the complex web of federal and state laws and standards that create the framework from which they work. To begin with, teachers and school districts need to be conscious of students’ rights afforded by a broad range of federal laws including, but not limited to, equal protection rights,²³ various First Amendment²⁴ and Fourth Amendment rights,²⁵ due process rights,²⁶ and student information privacy rights.²⁷ Educators also must be

²⁰ National Center For Education Statistics, *Status Dropout Rates*, (May, 2016), https://nces.ed.gov/programs/coe/indicator_coj.asp.

²¹ Danielle Douglas-Gabriel, *Remedial Classes Have Become a Hidden Cost of College*, WASHINGTON POST (April 6, 2016) https://www.washingtonpost.com/news/grade-point/wp/2016/04/06/remedial-classes-have-become-a-hidden-cost-of-college/?utm_term=.b29ad29fe7f2; Adrienne Lu, *1 in 5 Freshmen Need Remedial Courses, But Do They Work?*, USA TODAY (July 25, 2013) <https://www.usatoday.com/story/news/nation/2013/07/25/stateline-remedial-education/2586013/>.

²² Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, EDUC. RESEARCHER, v. 35 n. 7, 3-12 (October 2006) (defining the achievement gap as “a gap in academic achievement [that] persists between minority and disadvantaged students and their white counterparts.” The achievement gap is most often measured through standardized tests); see generally Nancy Kober, *It Takes More Than Testing: Closing the Achievement Gap*, Center on Education Policy, Report, 1-47 (2001).

²³ *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

²⁴ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969); *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 685 (1986); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988); *Morse v. Frederick*, 551 U.S. 393, 406-409 (2007); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

²⁵ *N.J. v. T. L. O.*, 469 U.S. 325, 333-340 (1985); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 657 (1995).

²⁶ *Goss v. Lopez*, 419 U.S. 565, 575-80 (1975).

²⁷ *Gonzaga Univ. v. Doe*, 536 U.S. 273, 278-279 (2002); *Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426, 428 (2002).

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mindful of the duty of care they owe to students.²⁸ Furthermore, teachers are public servants bound by laws that dictate what they can teach,²⁹ how and what they can communicate to the public as a public officer,³⁰ and why and how they can be properly terminated.³¹ While historically critical in progressing the public education system into compliance with students' constitutional rights, these laws still significantly regulate teacher and school board conduct.

Compounding the complexity, recent legislation and federal regulations have dramatically shifted the focus of public school teachers away from students' needs and onto arduous paperwork and unprecedented student reporting. Legislation and regulations, like the No Child Left Behind Act³² and the Every Student Succeeds Act,³³ have mandated additional tasks to teachers and school boards, which effectively trade-off student and teacher interaction time for menial reporting schemes that attempt to measure student progress and achievement.³⁴ Teachers and school boards also must remain attentive toward Department of Education (DOE) regulations and Dear Colleague letters.³⁵ Combined, federal and state laws and regulations are too complex

²⁸ *Du Bose v. Akron Pub. Schs.*, 1998 Ohio App. LEXIS 1805, No. 18707, 5 (April 29, 1998); *Wyke v. Polk County Sch. Bd.*, 129 F.3d 560, 575 & 576 (11th Cir. 1997); *Brownell v. Los Angeles Unified Sch. Dist.*, 4 Cal. App. 4th 787, 798 (1992).

²⁹ *Myer v. State of Nebraska*, 262 U.S. 390, 402 & 403 (1923).

³⁰ *Pickering v. Board of Education*, 391 U.S. 563, 574 (1968).

³¹ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546-548 (1985).

³² No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

³³ Every Student Succeeds Act, 20 U.S.C. § 6301 (2015).

³⁴ See generally Gregory Korte, *The Every Student Succeeds Act vs. No Child Left Behind: What's Changed?*, USA TODAY (Dec. 10, 2015) <https://www.usatoday.com/story/news/politics/2015/12/10/every-student-succeeds-act-vs-no-child-left-behind-whats-changed/77088780/> (discussing ESSA's attempt to "preserve the spirit of No Child Left Behind," and acknowledge and address the failure of its one-size-fits-all approach to teaching. ESSA defers almost entirely to states to create accountability laws); Alyson Klein, *The Every Student Succeeds Act: An ESSA Overview*, EDUCATION WEEK, March 31, 2016, <http://www.edweek.org/ew/issues/every-student-succeeds-act/index.html> (summarizing ESSA's provisions that allow States to choose from a menu of indicators to incorporate into their accountability systems, and the Act's reversal of NCLB's mandate to do teacher evaluations through student outcomes).

³⁵ See generally U.S. Dep't of Educ., Opinion Letter (Nov. 22, 2016) (urging states to eliminate the use of corporal punishment in public schools); U.S. DEP'T OF EDUC., GUIDANCE ON CONSTITUTIONALLY PROTECTED PRAYER IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS (Feb. 7, 2003); U.S. DEP'T OF EDUC., LETTER TO CHIEF STATE SCHOOL OFFICERS (Feb. 2, 2016) (introducing the Department and the Obama Administration's interpretations of state assessment plans and other new provisions under ESSA); see also, U.S. DEP'T OF EDUC., IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED; Final Rule, 34 C.F.R. § 200.00 (2006).

for teachers to implement in an effective way in the classroom.³⁶ The resulting complexity dehumanizes the educational process, and creates an education system where context is ignored and progress is subjectively defined and measured by achievement on tests.³⁷

Adding to the top-down pressures and confusion of education reform, the National Governors Association Center for Best Practices initiated a state-led effort to effectively nationalize K-12 curriculum.³⁸ The initiative created the Common Core State Standards, which was implemented in 45 states and the District of Columbia.³⁹ The Obama Administration's advocacy for such standards to make all high school graduates college- and career-ready seemed to be a useful, well-intentioned policy.⁴⁰ However, the Obama Administration further entangled the federal government in states' decisions regarding schooling by tying grant funds from the Race to the Top program to a state's willingness to implement the Common Core.⁴¹ Moreover, the Common Core is now heavily criticized for its ignorance in understanding comprehensively the multifarious and unique needs of students and schools.⁴² The standards

³⁶ Nora Todd, *Special Education: Understanding Federal and State Statutory Requirements*, Massachusetts Teachers Association, Center for Education Policy and Practice (2008); See generally Edwin W. Martin, Reed Martin, and Donna L. Terman, *The Legislative and Litigation History of Special Education*, 6 (1) THE FUTURE OF CHILDREN, 25-39 (Spring 1996).

³⁷ By context, I mean awareness of the environments students learn in and an appreciation for how and where students are raised.

³⁸ Andrew Porter, et. al., *Common Core Standards: The New U.S. Intended Curriculum*, 40 EDUCATIONAL RESEARCHER 103, 103 (2011).

³⁹ The 74 Million, *Understanding the Common Core: What It Is, What It Isn't*, THE 74 <https://www.the74million.org/article/understanding-the-common-core-what-it-is-what-it-isnt/>; see also, *Common Core Standards Adoption by State*, ASCD. Retrieved Jan. 26, 2016 from <http://www.ascd.org/common-core-state-standards/common-core-state-standards-adoption-map.aspx>.

⁴⁰ Porter, *supra* note 38.

⁴¹ See Jeremy Bachrach Siegfried, *It's Common Sense: Why the Common Core Is Not Coercive*, 25 CORNELL J. L. & PUB. POL'Y 723, 731 (2016).

⁴² William J. Mathis, *The "Common Core" Standards Initiative: An Effective Reform Tool?* The Great Lakes Center for Education Research & Practice (July 2010); Lauren Camera, Editorial, *As Test Results Trickle In, States Still Ditching Common Core*, U.S. NEWS, Sept. 21, 2015.

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have forced more teachers to “teach to the test.”⁴³ And its top-down approach to education begs the question of who benefits.⁴⁴

The government noise has put a significant strain on teachers and school boards to implement effective and cohesive curriculum.⁴⁵ Government standards have become so pervasive in teachers’ minds that even kindergarten teachers are changing their teaching styles to become more “overtly academic learning focus[ed].”⁴⁶ Contemporary reforms postulate expansion of school choice to counter the federal government’s encroachment on education.⁴⁷ But simply building more schools—or, changing the location of schools⁴⁸—grossly oversimplifies the problem. School choice reform does not address the systemic and rampant socioeconomic, racial, and ethnic disparities in schools, and it does not improve students’ educational attainment.⁴⁹ The focus should be on what is inculcated in students and how to better equip teachers to meet students’ needs.

⁴³ W. James Popham, *Teaching to the Test?*, 58 EDUCATIONAL LEADERSHIP 16, 16-20 (2001). School boards have followed suit in their single-track mindset to improve reading and math by “stripping curriculum opportunities, including art, music, physical education and more.” Tim Walker, *The Testing Obsession and the Disappearing Curriculum*, NATIONAL EDUCATION ASSOCIATION, Sept. 2, 2014.

⁴⁴ Natalie Gomez-Velez, *Common Core State Standards and Philanthrocapitalism: Can Public Law Norms Manage Private Wealth’s Influence On Public Education Policymaking?*, 2016 MICH. ST. L. REV. 161, 164 (2016) (“The role of philanthrocapitalists in the Common Core process is a striking example of the degree to which a small number of wealthy individuals can play a prominent role in education policymaking.”).

⁴⁵ See Stephenie Overman, *Fighting the Stress of Teaching to the Test: Educators Cope With Test Stress in Unique Ways*, NATIONAL EDUCATION ASSOCIATION, <http://www.nea.org/tools/fighting-stress-teaching-to-Test.html>.

⁴⁶ Lisa L. Minicozzi, *The Garden is Thorny: Teaching Kindergarten in the Age of Accountability*, 6 GLOBAL STUDIES OF CHILDHOOD 299, 299 (2016); see generally Lisa S. Goldstein, *Embracing Pedagogical Multiplicity: Examining Two Teachers’ Instructional Responses to the Changing Expectations for Kindergarten in U.S. Public Schools*, 21 J. OF RESEARCH IN CHILDHOOD EDUC. 378 (2007).

⁴⁷ Empowering Parents Through Choice Act, H.R. 1486, 110th Cong. (2007); Educational Opportunities Act, 115 S. 148 (2017); Ending Common Core and Expanding School Choice Act, H.R. 1462, 115th Cong. (2017).

⁴⁸ Mike Copeland, *Harmony Charter School Preparing to Renovate Old Waco H-E-B*, WACO TRIBUNE, Jan. 3, 2017; Doug Harlow, *Charter School Hoping to Occupy Old Court Building in Skowhegan*, PORTLAND PRESS HERALD, Feb. 5, 2017; Mario Koran, *Why You Might Find a Charter School in a Mall*, VOICE OF SAN DIEGO, March 31, 2016.

⁴⁹ See generally Martin Carnoy, *School Vouchers Are Not a Proven Strategy for Improving Student Achievement*, ECON. POLICY INST., Feb. 28, 2017.

C. CONTEMPORARY PRACTICES OF CURRICULUM DEVELOPMENT IN PUBLIC SCHOOLS

The current practice of curriculum development is delegated to states and localities.⁵⁰ States must act within the confines of federal regulations⁵¹ and students' constitutional rights,⁵² but states usually mandate curriculum decisionmaking autonomy to local school boards. There are different templates for developing curriculum; however most follow a similar outline to address these fundamental questions: What educational purposes should the school seek to attain?; What educational experiences should be provided to attain these purposes?; How can educational experiences be organized effectively?; And, how can success be determined?⁵³

Current frameworks for curriculum development tend to be generic and overly simplistic. Many states' department of education websites post framework models for curriculum development that follow a similar structure: planning (including issue and problem identification); articulating content and method for development (including state intended outcomes); implementation of a curriculum product that can be tested and revised; and evaluation and reporting.⁵⁴ While helpful for creating an agenda to develop curriculum, these frameworks do little to specify where school districts are looking to infuse real substance into their curriculum. What is often missing from discussion of these frameworks is the complexity of developing curriculum that conforms to

⁵⁰ See generally U.S. CONST. amend. X (Public education was not mentioned as one of the federal powers, so historically education has been delegated to the local and state governments); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("By and large, public education in our Nation is committed to the control of state and local authorities.").

⁵¹ See *supra* notes 32, 33, & 34.

⁵² See *supra* notes 23-28.

⁵³ RALPH W. TYLER, *BASIC PRINCIPLES OF CURRICULUM AND INSTRUCTION* (Chicago: University of Chicago Press) (1949).

⁵⁴ See Conn. State Dep't of Educ., *Guide to Curriculum Development: Purposes, Practices, and Procedures*, <http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&q=321162> (last visited Jan. 20, 2017); U.C. San Diego School of Medicine, *Curriculum Development: Process*, https://meded.ucsd.edu/index.cfm/ugme/mededtecheval/educational_development/curriculum_development/ (last visited Jan. 20, 2017); Allan A. Glatthorn, et. al., *Curriculum Handbook: Planning and Organizing for Curriculum Renewal*, <http://www.ascd.org/publications/curriculum-handbook/398/chapters/Thinking-About-Curriculum.aspx> (last visited Jan. 20, 2017) (providing a comprehensive overview of the roles different government actors and stakeholders should practice when developing curriculum, specifically divvying up roles between state, district, and school functions).

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national standards (NCLB,⁵⁵ ESSA,⁵⁶ etc.), state standards, and other federal laws and regulations,⁵⁷ and also meets the unique needs of students.

Much like the early justifications for a public education system—mostly to increase the education level to provide manpower for the industrialized economy—the country is experiencing another capitalistic innovation during the internet and technology age. And outdated methods of curriculum lag behind the nation’s fast-paced information-overloaded society.⁵⁸ The need for innovative curricula calls for a break from outdated development methods and a cessation from overbearing federal involvement. The need for innovative curriculum demands a similarly innovative process to develop it. An attempt to provide such a process is proposed in the pages that follow.

III. USE OF ADR TECHNIQUES IN DEVELOPMENT AND IMPLEMENTATION OF CURRICULUM IS BENEFICIAL FOR ALL STAKEHOLDERS

Like John Dewey’s theory of public “social inquiry” to engage citizens, I advocate for a public collaboration using ADR negotiation or mediation techniques to develop K-12 curriculum. Dewey posited that social inquiry can “yield knowledge that defines high-quality education, merit, and achievements in racially inclusive ways.”⁵⁹ His idea of social understanding created in the public sphere “promise[d] to be far more effective than

⁵⁵ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

⁵⁶ Every Student Succeeds Act, Pub. L. 114-95, 129 Stat. 1802 (2015).

⁵⁷ *Arce v. Douglas*, 793 F.3d 968, 982 (9th Cir. 2015) (determining the level of scrutiny applicable to a state’s decision to restrict classroom materials that are presented as part of a local school board’s approved curriculum).

⁵⁸ Olaf Jorgenson, *Why Curriculum Change is Difficult and Necessary*, INDEP. SCH. MAG., Summer 2006 <https://www.nais.org/magazine/independent-school/summer-2006/why-curriculum-change-is-difficult-and-necessary/> (“Today’s schools are not designed to prepare children for our explosive knowledge economy or its demand for outcomes over process; the traditional model of teachers dispensing discrete, disconnected bodies of information (curricula) presented in isolation from the other subject areas, is increasingly obsolete as a way to prepare children for our world.”).

⁵⁹ John Rogers & Jeannie Oakes, *John Dewey Speaks to Brown: Research: Democratic Social Movement Strategies, and the Struggle for Education on Equal Terms*, 107 TCHR. COLL. REC. 2178, 2178 (2005). It is noteworthy that Dewey’s views on education and democratic principles were substantially influenced by his colleague and co-author, Ella Flagg Young. For more on the great work of Young, please see Jackie M. Blount, *Ella Flagg Young and Gender Politics of Democracy and Education*, J. OF THE GILDED AGE AND PROGRESSIVE ERA (forthcoming).

conventional school reform” in creating more equitable policies.⁶⁰ He contended that “equality rests with the intellectual engagement of those who bear the burden of inequality most.”⁶¹ Social inquiry revitalizes local level engagement in public life by framing a powerful story of “parents and communities who want and deserve high-quality education and who know what education can and should be.”⁶²

Dewey offered little guidance about the circumstances and processes that could engender such social inquiry. Using ADR negotiation or mediation techniques to develop curriculum are methods for social inquiry that may curtail the distrust of experts and government, who routinely speak and act for disadvantaged students and districts instead of building the local community power “necessary to change the cultural and political asymmetries that sustain the very schooling inequalities that they seek to disrupt.”⁶³

Mimicking social inquiry’s goal to revitalize public life, use of negotiation or mediation to develop curriculum enables the practice of allowing all groups to speak on equal terms and “compel[s] the powerful to account for what they hear.”⁶⁴ In this context, the players with power equate to federal government actors, venture philanthropists, and corporations that seek to profit from students’ education.⁶⁵ Further, Dewey stressed the *structure* and *processes* of social inquiry in cultivating a “public intelligence about social problems affecting the daily lives of common people,”⁶⁶ and allowing marginalized groups more control in creating their own identities. Thus, to provide a more impactful and responsive educational experience, curriculum development must be a process of joint action. Meaning policy makers and isolated experts must push beyond traditional understandings of knowledge to include contact with, and input from, the actual workers (teachers and parents⁶⁷), “who bring special insight about their own troubles and aspirations.”⁶⁸ The remainder of this section explains why the ADR techniques of mediation and negotiation are suitable to facilitate justifiable and effective curriculum development.

⁶⁰ Rogers & Oakes, *supra* note 59, at 2178.

⁶¹ *Id.* at 2195.

⁶² *Id.* at 2179.

⁶³ *Id.* at 2189.

⁶⁴ *Id.* at 2179.

⁶⁵ Some examples of organizations that seek to profit from students’ education are textbook manufacturers, college preparation course companies, and standardized test creators.

⁶⁶ Rogers & Oakes, *supra* note 59, at 2179.

⁶⁷ Throughout this paper, I mean “parents” to include parents and guardians of school-aged children.

⁶⁸ Rogers & Oakes, *supra* note 59 at 2193-94.

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A. CURRICULUM, IS IT A DISPUTE?

It may not be readily obvious that curriculum development is a “dispute” analogous to disputes applicable to ADR techniques. Yet the tensions between federal standards, state administration, and local autonomy discussed above, evince the contest over who can, and who should, develop and control curriculum in K-12 schools. Throughout the history of education in this country, society has yet to settle on which governmental level should develop and implement curriculum, nor have education reformers or policymakers determined the best way to measure educational progress.

The literature on ADR recognizes that an ADR process is not suitable for some disputes, particularly when a plaintiff seeks a declaration of law from a court.⁶⁹ However, curriculum development is suitable to ADR as the only declaration of law necessary would be for Congress to codify stakeholders to use negotiation or mediation in the development process.

B. WHO MATTERS IN THE IMPLEMENTATION OF CHANGED CURRICULUM?

There are numerous reasons why curriculum reforms fail, including deficiencies in the curriculum articulation process, resistance from administrators and educators, lack of resources to properly implement curriculum,⁷⁰ and the incongruity of curriculum implementation in a decentralized system.⁷¹ Moreover, the inevitable changing needs of students force the role of educators to expand. Such an expansion is not inherently bad. In fact, this paper will later argue that the responsibilities of educators should be extended to grant them real meaningful power in the creation and implementation of curriculum. However, educators’ role should not expand into the realms of statutory interpretation and legislative intent.

Faculty resistance to curriculum changes are not caused by teachers who are hardheaded or lack improvement capacity, but because “collectively, teachers value their autonomy, worry about their ever-increasing workload and time constraints, and are, by nature, averse to risk and change.”⁷² Given the natural resistance to change, it is up to the principal to “reduce anxiety

⁶⁹ Jeswald W. Salacuse, *Is There a Better Way—Alternative Methods of Treaty-Based, Investor-State Dispute Resolution*, 31 *FORDHAM INT’L L.J.* 138, 156 (2007).

⁷⁰ Shuaibu Saidu & Sandra Shuaibu Saidu, *The Impact of Educational Resources on Curriculum Implementation in Nigeria*, 3 *J. EDUC., ARTS AND HUMAN.* 59 (2015).

⁷¹ Rachel E. Porter, et al., *Implementing the Common Core: How Educators Interpret Curriculum Reform*, 29 *EDUC. POL’Y* 111, 114-115 (2015).

⁷² Jorgenson, *supra* note 58.

levels for change and eliminate the high mortality rate of implementation efforts.”⁷³ It is critical that principals maintain open communication and encourage staff development and instructional planning throughout the curriculum development and implementation process.

Analyses of past failures to curriculum reform provide insight into how to improve the process for effective change. Since teachers are the “ultimate enactors” of curriculum change in schools,⁷⁴ their resistance needs to be expunged by giving them a strong role in curriculum reforms. Instead of distant governments and third-party experts telling teachers what to do without their input, teachers need to be given a voice. Deficiencies in the curriculum articulation process can be improved by opening communication channels and creating dialogue between curricula developers and curricula implementers. Increasing communication can also heighten awareness about gaps in schools’ resource needs, as well as counter the incompatibility of traditional models of curriculum with students’ evolving needs.

Moreover, “[f]ew professional development opportunities [for educators] are more stimulating than gathering with colleagues in a deliberate effort to discuss and discover how to teach more effectively.”⁷⁵ There is still hope that the entangled curriculum can be pulled from government control, and with great effort, can become malleable to the needs of local communities. Promoting cooperative efforts between teachers, school administrators, and major stakeholders to develop curriculum is discussed below.

C. HOW CAN ADR BE HELPFUL TO DEVELOP CURRICULUM?

The motivations behind an alternative to current curriculum development practices are similar to the motivations for an alternative to formal litigation: 1) *the high cost in time and money* of changing curriculum due to different government actors and local districts struggling to control education; 2) *the need for a more flexible process* that is more responsive to the needs of students and stakeholders; 3) *the need to achieve outcomes* that serve the students and community as a whole; 4) *the want by local communities to be involved in the process* of determining what their students

⁷³ Stephen J. Virgilio & Irene R. Virgilio, *The Role of the Principal in Curriculum Implementation*, 104 EDUC. 346, 347 (2001).

⁷⁴ Porter, *supra* note 71, at 115; see Gillian H. Roehrig, et al., *Teacher and School Characteristics and Their Influence on Curriculum Implementation*, 44 J. RES. SCI. TEACH. 883, 885 (2007).

⁷⁵ Jorgenson, *supra* note 58.

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learn; and 5) *the desire for a broader access* to an effective and accommodating school experience.⁷⁶

The discourses of “school choice” and “parental control” of education highlight the yearning for local independence to decide what is best for childhood development.⁷⁷ These discourses raise important issues concerning the health and equity of the nation’s public school system.⁷⁸ However, they also make presumptions about public education itself that may be misguided. Closing public schools and promoting “choice schools” distorts the real problem. It is not because of public education that teachers and schools practice one-size-fits-all instruction and exacerbate racial and class inequalities. Rather, education policymakers have failed to adapt to the dynamic needs of students.⁷⁹

What is inculcated in students in K-12 education is the foundation for how they interact in communities and impact the economy. Public money for education should be spent to bolster and diversify students’ knowledge to meet the needs of changing communities, rather than on building choice schools and corporatizing public education. Mediation and negotiation can further the development of practical curriculum that responds to students’ and communities’ needs in an evolving global job market by collecting input from all education stakeholders and providing a space and guidance for constructive dialogue.

ADR offers much more procedural flexibility, allows for more creative remedial options, and focuses on individualized justice more than the formal court system.⁸⁰ The flexibility afforded in mediations and negotiations

⁷⁶ See Thomas O. Main, *ADR: The New Equity*, 74 U. CIN. L. REV. 329, 354 (2005).

⁷⁷ Joanne Weiss, *School Choice That Puts Families First*, THOMAS B. FORDHAM INSTITUTE: FLYPAPER (Jan. 17, 2017), <https://edexcellence.net/articles/school-choice-that-puts-families-first>; e.g. Darcy Ann Olsen & Matthew J. Brouillette, *Reclaiming Our Schools: Increasing Parental Control of Education through the Universal Education Credit* (Cato Inst., Policy Analysis No. 388, 2000), <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa388.pdf>.

⁷⁸ Gary Orfield, HARV. UNIV. CIVIL RIGHTS PROJECT 2, 17 (2001), <http://files.eric.ed.gov/fulltext/ED459217.pdf>; e.g. Cevin Soling, *How Public Schools Demand Failure and Perpetuate Poverty*, THE DAILY BEAST (May 15, 2016, 12:01 AM), <https://www.thedailybeast.com/how-public-schools-demand-failure-and-perpetuate-poverty>.

⁷⁹ See generally Denisa R. Superville, *Closing Failing Schools Doesn’t Help Most Students, Study Finds*, EDUCATION WEEK (Aug. 24, 2017), <https://www.edweek.org/ew/articles/2017/08/24/closing-failing-schools-doesnt-help-most-students.html>; see also Kay McSpadden, *Public Schools Aren’t Failing*, THE CHARLOTTE OBSERVER (Jan. 30, 2015, 5:57 PM), <http://www.charlotteobserver.com/opinion/op-ed/article9499466.html>.

⁸⁰ Main, *supra* note 76, at 329.

provides the option to tailor or adapt the procedure of the settlement proceedings to a particular dispute between certain parties. These techniques would be readily applicable to localized curriculum development, to address the rigid, one-size fits all approach currently ingrained in K-12 curriculum. The process posited presumes the need to strengthen city-, district-, county-, and state-level economies, and to emphasize the voices of those who spend the most time with children: parents and teachers.

1. *NEGOTIATIONS*

To settle curriculum disputes, major stakeholders in K-12 education should begin by implementing negotiation techniques. Negotiation, simply put, is interaction with agreement as a goal. Humans naturally and regularly do this while interacting with others.⁸¹ At the very least, negotiation practices should be codified in local level curriculum development. Mandating negotiation practices and stressing local level stakeholder involvement, including teachers and parents, may help to ensure productive communication between all levels of education advocates.

Formal negotiations are, of course, susceptible to failures.⁸² Group dominance can play a major factor in negotiation failure.⁸³ In current K-12 curriculum development negotiations between the DOE with state actors, and state actors with those at the local level, there are demonstrable layers of dominance that can obstruct compliance when improperly handled. Moreover, the struggle between local parties, who desire to determine the trajectory of a child's education, and federal and state parties who seek to set standards for curriculum, is plagued with communication gaps and lack of trust.⁸⁴ Codifying negotiations into the curriculum development process is a good start, but parties will likely need additional guidance and structure.

⁸¹ See Erin Ryan, *The Discourse Beneath: Emotional Epistemology in Legal Deliberation and Negotiation*, 10 HARV. NEGOT. L. REV. 231, 235 (2005).

⁸² See generally Robert H. Mnookin, *Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict*, 8 OHIO ST. J. ON DISP. RESOL. 235, 238-39 (1993) (positing the barriers to negotiations as: (1) strategic barrier, suggested by game theory and the economic analysis of bargaining; (2) principal/agent problems of varied incentives; (3) cognitive, relating to how humans process information; and (4) reactive devaluation barriers, which relate to the fact that bargaining is an interactive social process in which each party is constantly drawing inferences about the intentions, motives, and good faith of the other).

⁸³ Lynn Sylvester & Ira B. Lobel, *The Perfect Storm: Anatomy of a Failed Regulatory Negotiation*, 59 J. DISP. RESOL. 44, 48 (May-July 2004).

⁸⁴ David Hoffman, *Why Do Negotiations Fail?*, INT'L ACAD. OF MEDIATORS, http://www.iamed.org/?page=Negotiation_Fail (last visited Feb. 22, 2017).

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2. MEDIATIONS

To generate real and impactful change in our public schools, policy actors should look beyond negotiations and implement mediation practices in the curriculum development process. Notwithstanding the added costs, mediation practices of ADR offer a more inclusive and constructive technique to dispute resolution than negotiations. Given the significance of education in developing informed critical thinkers to the sustainability of a democracy, the added costs associated with mediation practices to develop comprehensive, adaptive, and effective curriculum for our students are worth it.

Mediations provide *expert* facilitators⁸⁵ which, in the curriculum development process, could consist of education experts or neutral third-party mediators.⁸⁶ Recognizing the charged emotions surrounding the education of our youth, mediation in curriculum development would capture the wisdom behind the ADR technique: “in the achievement of a forum that advances the substantive goal by addressing the needs of the [mediation] within the acceptable emotional parameters of the participants.”⁸⁷

Unlike a judge, mediators have no authority to mandate an outcome,⁸⁸ so the ultimate authority to reach a resolution belongs to the parties. The expert helps to facilitate the parties to reach a unique solution to fit a single dispute. Parties acting *in personam* promotes self-interest in the outcome, and equitable principles of “conscience, equity, good faith, and honesty.”⁸⁹ This reinforces the goal for parents and teachers to feel involved in the lives of their children and students. Put differently, without listening to the people who most directly interact with and influence students, policymakers and legislators are merely guessing at what is worth teaching to the future leaders of the country. Through guided dialogue, mediations can encourage collective orientation toward the shared goal of developing practical curriculum to meet community needs and discourage opportunistic emotional manipulation. Productive dialogue stimulates good will, which enables parties to navigate roadblocks, uncertainties, communication gaps, and outright conflicts by “facilitating

⁸⁵ Main, *supra* note 76, at 364.

⁸⁶ All mediators would first have to be qualified as a mediator; however, these positions are open to any person who completes the appropriate training. Matthew Daiker, *No J.D. Required: The Critical Role and Contribution of Non-Lawyer Mediators*, 24 REV. LITIG. 499, 501 (2005). It would not be difficult to find mediators in each state. But it is critical that the mediator remains neutral and unbiased; therefore, it may be advantageous for mediators to work across state lines to prevent implicit biases if the mediator has school-age children.

⁸⁷ Ryan, *supra* note 81, at 269.

⁸⁸ Daiker, *supra* note 86, at 503.

⁸⁹ Main, *supra* note 76, at 369, 371.

respectful listening and empathetic consideration of opposing interests.”⁹⁰ Using mediations in curriculum development can create an environment that respects stakeholders’ varying sensibilities, and would allow mediators to learn, through interaction and dialogue, what is needed to reach an agreement on sound and practical curriculum.

Mediators are afforded more discretion than judges in shaping the process of interaction between the disputants; thus, by creating a better process (e.g., at a neutral venue⁹¹ or allowance of extra outside testimony) mediators can help facilitate improved communications between the parties.⁹² Mediators are charged with: evaluating parties’ tolerances, demanding overt expressions of emotionality, critically discerning the dishonesty of the data, and guarding against “emotional exploitation by an opportunistic adversary.”⁹³ Having a neutral third-party charged with these responsibilities during curriculum development discussions can alleviate distrust and cultivate constructive dialogue on a shared goal among stakeholders.

Most importantly, ADR mediations can provide a broad space for community input to address the spectrum of challenges to providing equitable and inclusive educational opportunities.⁹⁴ Public schools and K-12 curriculum are wanting of such critical community input, especially for minority and low-income students and communities.⁹⁵ Involvement of community reformers (i.e., individuals, groups, and organizations that experience analogous social, economic, and political inequalities that impact public school students) is critical to curriculum development. This involvement may foster connections between education and broader social challenges that students experience.

Through expert mediators’ application of flexible procedures that tailor outcomes to districts and communities and by emphasizing the substantive issues, mediation mechanisms can broaden the populace’s access to just outcomes beyond what is practical by federal regulations and the formal courts. Mediation and mediators will empower communities and districts by incorporating local norms and values into the curriculum development process. Offering parents a say in what, and how, children are taught provides them with a stake in the game, and could go a long way in bolstering parental

⁹⁰ Ryan, *supra* note 81, at 268.

⁹¹ Main, *supra* note 76, at 365.

⁹² Salacuse, *supra* note 69, at 160–61.

⁹³ Ryan, *supra* note 81, at 265.

⁹⁴ See Main, *supra* note 76, at 362.

⁹⁵ See Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, THE ATLANTIC (Feb. 29, 2016), <https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414/>.

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engagement in children's education. More specifically, empowering parents, teachers, and community members to speak and be heard will project into the public consciousness their stories about the cultural and political obstacles they experience in achieving an equitable and comprehensive local education system. By creating this greater public awareness, it is more likely that these obstacles can be more directly and successfully challenged.

IV. POTENTIAL SOLUTIONS AND FUTURE INQUIRIES

This section posits an alternative approach to curriculum development. It also calls to action state and local actors in the absence of federal codification of mediations in curriculum development, and highlights topics that need further research and analysis.

A. A "BOTTOM-UP" SOLUTION TO K-12 CURRICULUM DEVELOPMENT

Policymakers should implement a "bottom-up" method of curriculum development using mediations, so curriculum is responsive to the needs of local populations. The district level⁹⁶ is the venue where curriculum development and the mediations proposed ought to take place. Bringing less immediate, but more powerful stakeholders (e.g., DOE, state education departments, state legislators, county leaders, community organizations, and technical education experts) to district-level venues, equipped with mediators, can compel inclusion of local stakeholders (e.g., parents, teachers, school administrators, and local workforce leaders) and promote more robust conversations about how schools serve students, who then serve their communities and drive local job markets.⁹⁷ Moreover, it is hoped that these

⁹⁶ School districts are amorphous and vary in population and geographical size. The size of the district will dictate the inclusiveness or exclusiveness of the stakeholders involved in curriculum development. For example, school districts that envelop an entire county would include the following stakeholders: teachers throughout the county, county community and business leaders, parents, and state and DOE representatives (this list is not exhaustive). Whereas, school districts within and surrounding major cities would, in addition to the stakeholders listed above, include: teachers and administrators from neighboring districts and community leaders that may be located outside of the school district.

⁹⁷ "The art of teaching at its best requires giving teachers the freedom to structure their lesson plans on the basis of their students' interests, to linger on a given subject that has unexpectedly piqued their students' curiosity, and to incorporate pedagogical methods other than those narrowly prescribed from above." MICAH UETRICH, STRIKE FOR AMERICA: CHICAGO TEACHERS AGAINST AUSTERITY 8 (2014).

networks become sustainable and, as a part of the curriculum development plan, mediate periodically to discuss and address changing student needs as communities, demographics, and economies evolve.

After the initial development of curriculum at the district level, states would be charged with analyzing all local curriculum plans produced in the state to set state-level standards for pedagogical progress and student achievement. As districts periodically update curriculum, states may be compelled to update education standards in response. Presumably, states' responsive changes to curriculum updates would be relatively minor compared to the original changes if the bottom-up approach is codified. This bottom-up approach would limit the federal role in K-12 education to remedy discrimination, uphold students' and parents' constitutional rights,⁹⁸ and maximize local stakeholders' involvement.

Use of mediations in bottom-up curriculum development is analogous to the goals of organizing: creating networks that sustain activist communities, framing stories about each network's identity and purpose, and developing a process of action that "mobilizes and expends resources to advance the community's interest" in a comprehensive education for its youth.⁹⁹ Similar network organizing and social inquiry practices (analogous to mediation and negotiation) are already used to develop individualized educational program (IEP) plans for students with disabilities.¹⁰⁰ Parents, teachers, school administrators, counselors, etc., come together to create unique plans that address the developmental needs of each student and the supplemental support needed by parents.¹⁰¹ This is not to suggest that ADR methods to curriculum

⁹⁸ Additionally, the process of curriculum development advocated for would be advantageous to the role the federal government would play. The process would facilitate and unify dialogues between the people discriminated against the most with the people in authority who can remedy the discrimination. Trying to protect constitutional rights without knowledge of the nuanced ways discrimination impacts students, families, communities, and school districts is what led to the current state of public schools (where social inequalities are exacerbated, and racial and ethnic discrimination has tacitly re-segregated public schools). See generally Nikole Hannah-Jones, *Segregation Now...*, THE ATLANTIC, May 2014; see also Nicole Hemmer, Opinion, *Separate and Unequal, All Over Again*, U.S. NEWS (May 20, 2014), <https://www.usnews.com/opinion/blogs/nicole-hemmer/2014/05/20/resegregation-in-us-schools-60-years-after-brown-v-board-of-education>.

⁹⁹ Rogers & Oakes, *supra* note 59, at 2196.

¹⁰⁰ Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 (10), 1414 (d)(1)(A)-(B) (2004).

¹⁰¹ See generally *The Parent-Teacher Partnership*, SPECIAL EDUCATION GUIDE (Feb. 22, 2017), <http://www.specialeducationguide.com/pre-k-12/the-parent-teacher-partnership/>.

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development need to take place through IEPs for all students. Rather, the point is to highlight that the more individualized, or decentralized the curriculum, the better able it will be to meet the needs of students. By mediating with stakeholders at the start of curriculum development, implementers ensure they receive critical opinions and feedback about what impacts students in their communities.

Moreover, complacency by federal and state officials in adapting curriculum to meet local needs is unacceptable, and placing blame on parents, teachers and community leaders for being unconcerned about student needs is injudicious. “Placing the onus on [marginalized groups within communities to initiate a more responsive curriculum development process] calls on them to surmount the material and political asymmetries that underlie their current disadvantages.”¹⁰² Moving the venue for discussions and decisions about major educational choices to the district level will embolden teachers and citizens marginalized by traditional top-down curriculum development. Without actively engaging parents, teachers, and community stakeholders in curriculum development through mediation methods or something similar, we risk the perpetuation of students entering society and the job market without the necessary knowledge, critical thinking skills, and cultural awareness to be successful citizens.

B. POTENTIAL COSTS

Undoubtedly, employing negotiation or mediation techniques in curriculum development would be taxing, both monetarily and in human resources. But the costs of a poorly educated and inept workforce on our society would be exponentially higher.¹⁰³ Power struggles over K-12 education exacerbate inconsistencies and erode efficiencies in student development and have yet to yield positive results in education equity. Notwithstanding the added costs, implementation of mediation techniques in the process of curriculum development is still a practical solution to address our stagnated public education system.

The process proposed will not be a quick fix, and like all elaborate public systems there will be a maze of complex issues to work through and numerous hurdles to overcome. But, once more active districts start the dialogue for, and process of, curriculum development, districts that take longer to organize stakeholders can look to other districts’ curriculum plans as a

¹⁰² Rogers & Oakes, *supra* note 59, at 2198.

¹⁰³ *Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings*, ALLIANCE FOR EXCELLENT EDUCATION (Sept. 2013), <https://all4ed.org/wp-content/uploads/2013/09/SavingFutures.pdf>.

resource.¹⁰⁴ Shared templates can cut the expense associated in the curriculum development processes. Moreover, through this process, already overworked teachers will hopefully be able to discard menial reporting schemes and instead they will be asked to actually use their expertise.¹⁰⁵ If stakeholders remain cognizant of their shared goal to improve public education for all students, the benefits for students and communities may be enormous.

C. OTHER POTENTIAL REMEDIES FOR INEQUITABLE AND INEFFECTIVE CURRICULUM DEVELOPMENT

Stakeholders should push to reinvigorate the Tenth Amendment.¹⁰⁶ Although the goals offered above would be best administered through federal codification of mediation practices into curriculum development, to delineate excessive authorities between federal, state and local governments, the states could similarly codify these practices through legislation or constitutional amendments. One potential barrier to states codifying mediation practices in curriculum development is the federal education funding scheme, which conditions funds on states' adaptation to federal expectations for students.¹⁰⁷ States and localities will have to exert more political pressure on the federal

¹⁰⁴ John Richardson, *How Negotiators Choose Standards of Fairness: A Look at the Empirical Evidence and Some Steps toward a Process Model*, 12 HARV. NEGOT. L. REV. 415, 424 (2007) ("In real life, negotiators look to results of similar negotiations. Real estate buyers look at past sales in the same neighborhood. Mergers and acquisition bankers look at deals from the same industry. When searching for a referent to judge their negotiation, and themselves, it is often easier to judge oneself against others in the same role, or on the same side in parallel negotiations.").

¹⁰⁵ It follows from teachers being encouraged to use their training and experience to develop curriculum that teachers will be reinvigorated, and, in turn, change the dominating view of teachers to one of respect for the noble profession of educating the nation's youth and future leaders.

¹⁰⁶ U.S. CONST. amend. X.

¹⁰⁷ See Brendan Pelsue, *When it Comes to Education, the Federal Government is in Charge of... Um, What?*, ED. (Aug. 29, 2017, 11:16 AM), <https://www.gse.harvard.edu/news/ed/17/08/when-it-comes-education-federal-government-charge-um-what> (stating, "The 2001 No Child Left Behind Act (NCLB) marked a new level of federal oversight by requiring states to set more rigorous student evaluation standards and, through testing, demonstrate 'adequate yearly progress' in how those standards were met The [Obama] administration responded by issuing waivers to states that did not meet nclb standards, provided they adopted other policies the administration favored, like Common Core standards [W]hen ESEA was reauthorized in 2015 as the Every Student Succeeds Act (ESSA), NCLB standardized testing requirements were kept, but the evaluation and accountability systems meant to respond to the results of those tests became the responsibility of individual states.").

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government to respect the Tenth Amendment¹⁰⁸ and the role of the states in public education. Furthermore, states should pressure the federal government to use its funding scheme only to protect students' rights under the First, Fourth, Fifth, and Fourteenth Amendments, instead of using funding as a carrot and a stick to coerce all states to adopt specified curriculum and student achievement standards.

Moreover, if political hurdles to codify mediation or negotiation into the curriculum development process prove too high at federal and state levels, policymakers and K-12 education stakeholders must take it upon themselves to heed the opinions of parents, teachers, school administrators, and community leaders to foster some responsiveness to localized needs of students and school districts. The onus must be on all citizens to perpetuate discussions with policymakers, and more importantly with each other. If government is unwilling to change its poor behavior, it will be up to district and community leaders to open communication with marginalized groups. Community led discussions about student education will, at the very least, unveil the students discriminated against, silenced, and forgotten. And, these discussions could foster awareness of the historical, cultural, socioeconomic, and racial and ethnic challenges that hinder comprehensive community development and effective education reforms.

D. FUTURE INQUIRIES

This article advocates in broad strokes for a change in the curriculum development process; it does not focus on pedagogical concerns of curriculum *per se*, and more discussion and research need to be done to address these technical concerns. However, by emphasizing the process of curriculum development, we can better meet the pedagogical needs of students through awareness of the holistic contexts that affect childhood development.

Prior to codifying the ADR practices suggested, further information is needed about economic and job market projections (from local, state, and national perspectives) to determine how to align future curriculum to the meet the evolving demands of the job market. Stakeholders will also benefit from demographic information in the 2020 Census, to better understand who their schools and communities are serving. Additionally, it would be remiss to exclude a call for additional pedagogical research; however, this research

¹⁰⁸ Especially in response to the Supreme Court's decision in *San Antonio Independent Schools v. Rodriguez*, 411 U.S. 1 (1973) (holding that education is not a fundamental right under the U.S. Constitution).

needs to focus on the inputs that most benefit students, as opposed to student outputs on tests.¹⁰⁹

V. CONCLUSION

Current K-12 curriculum development processes contain a mosh pit of education and political stakeholders with the strongest, but most remote and least impactful, stakeholder (the federal government) maintaining control. This top-down approach forces curriculum and standards onto teachers and students, de-emphasizes the process of curriculum development, and silences the voices of those with the largest stake in the education process. By using ADR techniques like mediation or negotiation, the process of developing K-12 curriculum will empower repressed communities' unprecedented involvement in the education of their youth and the futures of their communities.

The solutions to K-12 curriculum development posited in this article focus only on the *process* of development, including: the appropriate venue; an emphasis on inclusive dialogue; mediators' abilities to tailor the development process to flexibly respond to roadblocks, power imbalances, and stakeholder concerns; and the empowerment of activist communities and marginalized groups. Using alternative dispute resolution mediation or negotiation mechanisms to develop curriculum will counter the disjointed, unresponsive, and dormant development of curriculum by the federal and state governments and provide school districts with opportunities to better respond to their students' needs.

¹⁰⁹ Furthermore, prior to implementing a process like this, more research about the equity and effectiveness of school funding and school district boundary lines is needed to help determine how best to fund the process proposed.